INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes and Regulations involved	2
Statement	3
Argument	7
Conclusion	19
Appendix	20

CITATIONS

Cases:

Ahles Realty Corp. v. *Commissioner*, 71 F. 2d 150, certiorari denied, 293 U.S. 611	15
Bacon v. *Commissioner*, 4 T.C. 1107	14
Barker v. *United States*, 200 F. 2d 223	14
Britt v. *Commissioner*, 114 F. 2d 10	14, 17
Cleveland Graphite Bronze Co. v. *Commissioner*, 10 T.C. 974, affirmed *per curiam*, 177 F. 2d 200	18
Commissioner v. *Ashland Oil & R. Co.*, 99 F. 2d 588, certiorari denied, 306 U.S. 661	15
Helvering v. *Cement Investors*, 316 U.S. 527	10, 14
Heller v. *Commissioner*, 147 F. 2d 376, certiorari denied, 325 U.S. 868	15
Helvering v. *Limestone Co.*, 315 U.S. 179	15
LaBelle Iron Works v. *United States*, 256 U.S. 377	18
Palomar Laundry v. *Commissioner*, 7 T.C. 1300	18
Simmons Co. v. *Commissioner*, 33 F. 2d 75, certiorari denied, 280 U.S. 588	18
Survaunt v. *Commissioner*, 162 F. 2d 753	15
United Carbon Co. v. *Commissioner*, 90 F. 2d 43	17
United States v. *Arcade Co.*, 203 F. 2d 230, certiorari denied, 346 U.S. 828	16, 17
Warner Co. v. *Commissioner*, 11 T.C. 419, affirmed *per curiam*, 181 F. 2d 599	18

Statutes:

Page

Internal Revenue Code of 1939:

Sec. 113 (26 U.S.C. 1952 ed., Sec. 113), 2, 8, 9, 10, 11, 13, 14, 16, 20

Sec. 718 (26 U.S.C. 1952 ed., Sec. 718) .. 2, 8, 9, 18, 22

Revenue Act of 1928, c. 852, 45 Stat. 791, Sec. 112, 2, 8, 10, 12, 13, 14, 16, 23

New York Stock Corporation Law:

Sec. 22 17

Sec. 29 ..... 12, 17

Miscellaneous:

3 Mertens, *Law of Federal Income Taxation*, Sec. 21.95 10

Treasury Regulations 103:

Sec. 19.113(a)(7)-1 ..... 3, 26

Sec. 19.113(a)(8)-1 ..... 3, 26

Treasury Regulations 109, Sec. 30.718-1..... 3, 26

Treasury Regulations 111:

Sec. 29.113(a)(7)-1 ..... 3, 24

Sec. 29.113(a)(8)-1 ..... 3, 14, 25

Treasury Regulations 112, Sec. 35.718-1..... 3, 26

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 630

BARD-PARKER COMPANY, INC., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court (R. 3-14)[1] is reported at 18 T. C. 1255. The opinion of the Court of Appeals (Pet. App. 6-14) is reported at 218 F. 2d 52.

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[1] References designated "R." are to the appendix to the taxpayer's brief in the Court of Appeals, references designated "Pet. App." are to the appendix to the petition for a writ of certiorari, and those designated "Appendix" are to the appendix to this brief.

JURISDICTION

The judgment of the Court of Appeals was entered December 6, 1954. (Pet. App. 6.) The petition for a writ of certiorari was filed March 1, 1955. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTIONS PRESENTED

1. Whether the amount includible in taxpayer's equity invested capital under Section 718(a) of the Internal Revenue Code of 1939, with respect to intangible property acquired in 1930 from a predecessor corporation, is the par value of the stock it issued in exchange (as taxpayer contends) or the basis of the property in the hands of the predecessor-transferor corporation (as both courts below held). The answer depends on whether the property was acquired by taxpayer "in connection with a reorganization" within the meaning of Section 113(a)(7) of the Internal Revenue Code, and this in turn depends on whether the property was acquired pursuant to a "reorganization" as defined in the Revenue Act of 1928.

2. Whether the courts below erred in excluding from taxpayer's equity invested capital the value of stock issued for services.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutory provisions and Treasury Regulations are set forth in the Appendix, *infra*, pp. 20-26. The statutory provisions consist of portions of Sections 113(a) and 718(a) of the Internal Revenue Code of 1939, and of Section 112(a), (b),

(i), and (j) of the Revenue Act of 1928, c. 852, 45 Stat. 791. The Treasury Regulations consist of portions of Sections 29.113(a)(7)-1 and 29.113(a)-(8)-1 of Regulations 111, promulgated under the Code; of Section 35.718-1 of Regulations 112, promulgated under the Code; and of corresponding provisions of Treasury Regulations 103 and 109, promulgated under the Code.

STATEMENT

The facts as stipulated and found by the Tax Court (R. 3-8) may be summarized as follows:

The taxpayer corporation (sometimes referred to as the "new" corporation) is the successor of a New York corporation of the same name (sometimes refered to as the "predecessor" or "old" corporation), which was organized in 1916 and engaged in the manufacture and sale of patented detachable-blade surgical knives. After 1925 the old corporation had outstanding 120 shares of $50 par value common stock, of which 90 were owned by Morgan Parker and 30 by James White. (R. 3.)

A "Syndicate Agreement" was entered into on July 28, 1927, between Parker, the old company, and other persons referred to as "subscribers." The agreement contemplated that detachable-blade scissors invented by Parker would be produced in a limited quantity by the old company to determine the best method of production and the probable commercial market, and that a new corporation would then be organized. The stock in the new corporation was to be issued for the scissors patents

except for the required number of shares issued for cash for organizational purposes. Parker was to receive one-fourth of the stock, a similar portion was to be given to the subscribers, and one-half to the old corporation. The old company agreed to authorize the issuance of $50,000 of seven percent preferred stock of $100 par value to be sold to the subscribers and to use the proceeds in a special fund for the development of the scissors. The subscribers were given the election of converting their preferred shares into stock of the new corporation. (R. 3-4.)

Subscriptions to the preferred stock of the old company, aggregating $50,000, were made by the subscribers, persons not previously interested in the old corporation. In 1928, J. W. B. Ladd was employed by the old company as a mechanical engineer and he engaged in inventive work upon the scissors resulting in improving patents issued to Parker and himself. In March, 1930, the development work had reached the stage where manufacturing could begin, but it was decided that the initial commercial venture would be in the small field of surgical scissors. It appeared advantageous commercially and economically to have the new corporation market the scissors under the name of the old corporation. (R. 4.) Accordingly, the stockholders of the old corporation, at a meeting held March 12, 1930, passed resolutions consenting to the formation of a new company of the same name and the dissolution of the old company, fifteen days thereafter, as provided by Section 22 of the

Stock Corporation Law of New York. It was also resolved to have the directors sell the assets, good will, and corporate name of the old company to the new corporation. Preferred stock of the new corporation was to be received for the physical assets and net worth, and common stock for all other property including good will and the right to use the corporate name. The new corporation (taxpayer) was incorporated in New York on April 8, 1930. The old company was automatically dissolved on April 24, 1930. The authorized capital stock of the new corporation was $1,950,000, consisting of 4,500 shares of $100 par value seven percent cumulative preferred and 150,000 shares of $10 par value common stock. The taxpayer purchased the tangible assets of the old company from the liquidating directors of that corporation on April 28, 1930, for $209,300 par value preferred stock and the assumption of liabilities of $18,855.59. The intangible assets of the old company were purchased for $750,000 par value common stock of the taxpayer. The preferred shareholders of the old company received $50,000 par value in preferred shares of the taxpayer. The remaining preferred was issued to the common stockholders of the old company in the ratio in which they owned its stock, i. e., seventy-five percent to Parker and twenty-five percent to White. The common stock of taxpayer was issued to Parker and White in the same ratio. (R. 5-6.)

On the same date (April 28, 1930), taxpayer's directors authorized the issuance of $750,000 of taxpayer's common stock in exchange for certain pat-

ents and applications owned by Parker. These shares were issued to various individuals, including Parker. Additional capital was obtained by taxpayer through the installment sale for cash of $101,000 par value preferred stock, principally to the original subscribers for preferred stock of the old corporation. (R. 6.)

Ladd received $50,000 par value common stock of the taxpayer for his services resulting in improvements to the detachable-blade scissors. An amendment of taxpayer's charter reducing the authorized preferred stock from 4,500 to 4,000 shares of $100 par value, and increasing the authorized common stock from 150,000 to 155,000 shares of $10 par value, was made in order to make this distribution possible. (R. 7.)

The balance sheet of the old company for the year 1929 listed its "Patents and developments" at $38,325.15, and "Other assets" at $236,975.60, and liabilities at $28,014.33. (R. 7.)

Gain or loss was not reported by taxpayer or Parker from the transactions involving the purchase by taxpayer of the old company's assets and Parker's patents. (R. 6.)

In its excess profits tax returns for the taxable years taxpayer included in its equity invested capital, for the purpose of computing its excess profits tax credit, the full par value of its common stock in the amount of $1,550,000. The Commissioner in his notice of deficiency reduced the invested capital by that amount. (R. 8.) The Tax Court, in a decision reviewed by the full court, sustained the

Commissioner's determination in part. With respect to the $50,000 of stock issued for Ladd's services, it held that no amount was includible in equity invested capital. (R. 8-9.) With respect to the $750,000 of stock issued for the old corporation's intangible assets, it held that the amount includible was the cost to the old corporation. (R. 9-11.) With respect to the $750,000 of stock issued for Parker's scissors patents, it held that the amount includible was cost to taxpayer, i.e., the fair market value of the patents at the time they were acquired, which it found to be $300,000. (R. 11-14.) Taxpayer's motion for reconsideration was denied. (R. 2.) It appealed from so much of the Tax Court's decision as was adverse to it, and the Court of Appeals (Clark, Frank and Harlan, JJ.) unanimously affirmed. (Pet. App. 6-14.)

ARGUMENT

The decision below, affirming that of the Tax Court, is correct. The case turns on its own facts, there is no conflict, and no occasion for further review.

In 1930 the assets of taxpayer's predecessor corporation were distributed in liquidation to its directors, acting as liquidating trustees, who then retransferred them to the newly formed taxpayer corporation, in exchange for part of taxpayer's stock. At the same time, taxpayer issued some of its shares to an individual (Parker) in exchange for patents, and issued additional shares to another individual (Ladd) for services. A controlling in-

terest in the stock of the taxpayer corporation remained in the stockholders of the predecessor. The ultimate issue presented is the amount includible in taxpayer's equity invested capital under Section 718(a)(2) of the Internal Revenue Code of 1939 (Appendix, *infra,* p. 22), for purposes of computing its excess profits tax liability for the taxable years (1941-1943) on account of the properties and the services for which its stock was issued. With respect to the properties, the answer depends on their "basis" under Code Section 113(a) (Appendix, *infra,* pp. 20-22), which in turn depends on whether the properties had been acquired in a tax-free exchange under the provisions of Section 112 of the 1928 Revenue Act (Appendix, *infra,* pp. 23-24). With respect to the services, the answer depends on whether the term "property" appearing in Code Section 718(a)(2) embraces services.

Viewing the transfer of the old corporation's assets to the liquidating trustees and their retransfer to taxpayer as component steps in a single transaction, the Tax Court unanimously held that the exchange was a tax-free reorganization within Section 112(b)(4) of the 1928 Act, with the result that under the carry-over provisions of Code Section 113(a)(7) the basis of these assets to taxpayer was the same as in the hands of the old corporation. With respect to the individually owned patents which were contemporaneously transferred to taxpayer (the non-reorganization exchange), the Tax Court held that this exchange did not meet the

non-recognition requirements of Section 112(b)(5) of the 1928 Act; that consequently the carry-over provisions of Code Section 113(a)(8) were inapplicable; and that the basis of the patents was their cost to taxpayer. As for the stock issued for services, the Tax Court held that no amount was includible in taxpayer's equity invested capital. Taxpayer appealed from that portion of the Tax Court's decision which was unfavorable to it, i.e., with respect to the amount includible in equity invested capital on account of the stock issued for the predecessor's assets and for the services,[2] and the Court of Appeals affirmed.

I

Stock Issued for Predecessor's Assets

1. Section 718(a)(2) of the Internal Revenue Code authorizes the inclusion in equity invested capital of "Property * * * paid in * * * for stock", in an amount equal to the "basis" of the property. Under Code Section 113(a) the basis of property is its "cost" to the taxpayer, with certain exceptions. One of the exceptions relates to property acquired by a corporation "in connection with a reorganization." Section 113(a)(7). Whether property was

[2] Taxpayer accepted the Tax Court's holding that the exchange of stock for Parker's patents was a taxable exchange, and that therefore the cost of the patents to taxpayer was includible in equity invested capital. It challenged the holding that (1) the exchange of the old corporation's assets for taxpayer's stock was a tax-free reorganization, requiring carry-over of the old corporation's basis, and (2) no amount was includible in equity invested capital on account of Ladd's services.

acquired in connection with a "reorganization" depends on the statutory definition of that term, and, since the property here involved was acquired in 1930, the 1928 Revenue Act applies. Section 112(i)(1)(B) of that Act defines a reorganization as a "transfer by a corporation of all or a part of its assets to another corporation," if immediately thereafter the transferor or its stockholders or both are in control of the transferee corporation. If a reorganization occurred, then Code Section 113(a)(7) requires that the basis of the property transferred be "the same as it would be in the hands of the transferor" corporation,[3] with adjustments not here material. The provision for carry-over of basis contained in Section 113(a)(7) is functionally related to the provision for non-recognition of gain or loss upon a reorganization exchange. See Section 112(b)(4) of the Revenue Act of 1928 and the corresponding section of the Code. Its manifest purpose is to prevent a corporation acquiring property in connection with a reorganization from using a higher or "stepped-up" basis for the property where no taxable gain was recognized upon the exchange. See *Helvering* v. *Cement Investors,* 316 U. S. 527, 534; 3 Mertens, *Law of Federal Income Taxation,* Section 21.95.

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[3] Paragraph (A) of Code Section 113(a)(7) provides that where (as here) the reorganization occurred before 1936, then the transferee is required to carry over the transferor's basis only if immediately after the transfer, "an interest or control in such property of 50 per centum or more remained in the same persons or any of them." It is undisputed that, if the transaction in question otherwise comes within Section 113(a)(7), it also satisfies the control requirement.

2. The undisputed documentary evidence clearly warrants the Tax Court's conclusion (R. 9-11) that the property in question was acquired by taxpayer in 1930 from the predecessor corporation in connection with a non-taxable corporate "reorganization" as defined in the 1928 Act, and hence that taxpayer is required by Code Section 113(a)(7) to take the same basis for the property as it had in the hands of the predecessor-transferor corporation. Upon its organization in 1930, taxpayer acquired the net assets of an existing corporation of the same name, in exchange for its stock. (R. 4-5, 31-36; Stip. Ex. 24-X.[4]) The transfer of the old corporation's assets to the new was accomplished pursuant to Section 22 of the New York Stock Corporation Law. (R. 5, 31-36.) That section (Pet. App. 3-5) authorizes a corporation to transfer its property, including its "good will and right to use the corporate name," to a new corporation of the same name, and to become automatically dissolved fifteen days after the successor corporation's charter is filed. In conformity with the provisions of that section, the stockholders of the old corporation passed resolutions in March of 1930 consenting to its dissolution and the formation of a new corporation, and authorizing the directors of the old corporation to convey all its assets to the new one. (R. 31-34.) Preferred stock of the new corporation was to be exchanged for the "physical assets;" and common stock "for all other property, including

[4] Joint Exhibits 1-A through 25-Y are attached to the stipulation of facts.

the good will and the right to the use of the corporate name." (R. 32-33.) The new corporation (taxpayer) was organized on April 8, 1930, and the old one was dissolved on April 24, 1930. A few days later, on April 28, 1930, the directors of the old corporation, acting as "liquidating directors,"[5] conveyed its assets to the new corporation, which assumed the liabilities of the old, and a controlling interest in the stock of the new corporation remained in the stockholders of the old. (R. 5-7, 15-30.)

On the basis of these uncontroverted facts, the court below properly approved the Tax Court's conclusion that the transfer of the assets of the old corporation to the new constituted tax-free reorganization within the meaning of Section 112(i)(1)(B) and (b)(4) of the 1928 Act, and that consequently taxpayer was required under Code Section 113(a)(7) to use the basis of the old corporation. In the language of Section 112(i)(1)(B) of the 1928 Act, the applicable statutory definition of a reorganization, there was "a transfer by a corporation of all * * * of its assets to another corporation."[6]

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[5] By virtue of Section 29 of the New York Stock Corporation Law (Pet. App. 5), the directors of a dissolved corporation act as liquidating trustees, and the corporation continues in existence for the purpose of winding up its affairs.

[6] Additional support for the Tax Court's conclusion is furnished by the tax treatment which taxpayer itself accorded the transaction in the year (1930) in which it took place. No gain or loss was reported upon the exchange of taxpayer's stock for the predecessor's assets. (R. 6.) Instead, a single income tax return was filed on behalf of both taxpayer and its predecessor for the calendar year 1930, in which the exchange was treated as a non-taxable reorganization. (Stip. Ex. 5-E, p. 3.)

3. Taxpayer here challenges the Tax Court's decision, as it did in the court below, upon two alternative theories: (1) The transfer by the old corporation of its assets and the concurrent transfer by Parker of his individually owned assets (patents) must be treated as component parts of a single transaction which is to be tested by the provisions of Sections 112(b)(5) and 113(a)(8), rather than by those of Sections 112(b)(4) and 113(a)(7) (Pet. 8-10, 12-13); (2) even if Sections 112(b)(4) and 113(a)(7) are applicable, there was no corporate reorganization because the transfer of the old corporation's assets to the new must be treated as two separate and unrelated transactions —a transfer by the old corporation to the liquidating trustees, and a transfer by the latter to the new corporation. (Pet. 11-12). The court below properly rejected both theories.[7]

(a) Transfers of different properties by different transferors are not transformed into component steps of a single transaction, for purposes of applying the basis provisions of Section 113(a), simply because the properties are transferred at the same time to the same transferee. The transfer of the predecessor corporation's property, and the transfer of Parker's property, were not procedural steps in one transaction—as were the preliminary transfer of the assets of the predecessor to its liquidating directors, and the latters' immediate retransfer of those same assets to the new corpora-

[7] In the court below taxpayer advanced these theories in reverse order, and accordingly they were there dealt with in that order.

tion. The old corporation's transfer of its assets via its directors, and Parker's transfer of his assets, constituted separate transfers. The "property" and the "transferor," as those terms are used in Section 113(a)(7), were in each instance different.

As the court below noted (Pet. App. 12-13), the fallacy in taxpayer's argument lies in its assumption that the non-recognition provisions of Section 112(b)(4) and (5), and the complementary basis provisions of Section 113(a)(7) and (8), are mutually exclusive rather than cumulative exceptions to the general rules of Sections 112(a) and 113(a), respectively. The exceptions to Section 112(a) contained in Section 112(b)(4) and (5), and the correlative exceptions to Section 113(a) contained in Section 113(a)(7) and (8), frequently overlap. *Helvering* v. *Cement Investors, supra* (pp. 533-534); *Barker* v. *United States,* 200 F. 2d 223, 229 (C. A. 9th); *Britt* v. *Commissioner,* 114 F. 2d 10, 13-14 (C. A. 4th); *Bacon* v. *Commissioner,* 4 T. C. 1107; Section 29.113(a)(8)-1 of Treasury Regulations 111 (Appendix, *infra,* p. 25). An intercorporate exchange of property for stock may constitute a "reorganization" falling within the exception provisions of Sections 112(b)(4) and 113(a)(7) regardless of whether or not it falls within those of Sections 112(b)(5) and 113(a)(8), and vice versa.[8] No reason exists, and

[8] Similarly, an exchange which does not fall within either Section 112(b)(4) or (5) (and complementary Sections 113(a)(7) or (8)) may come within some other exception contained in Section 112(b) to (e) and complementary Section 113(a)(6).

none is suggested by taxpayer, for supposing that Congress intended to prevent an intercorporate exchange of property for stock from qualifying as a reorganization merely because individually owned property, or cash, is contemporaneously transferred.

(b) In alternatively contending that the transfer of the old corporation's assets to the new was not a reorganization, because of the intervening transfer of those assets to the liquidating trustees, taxpayer has disregarded the established rule that the transaction is to be viewed as a whole from beginning to end, not according to its intermediate procedural steps. *Helvering* v. *Limestone Co.*, 315 U. S. 179; *Survaunt* v. *Commissioner*, 162 F. 2d 753 (C. A. 8th); *Ahles Realty Corp.* v. *Commissioner*, 71 F. 2d 150 (C. A. 2d), certiorari denied, 293 U. S. 611; *Heller* v. *Commissioner*, 147 F. 2d 376 (C. A. 9th), certiorari denied, 325 U. S. 868; *Commissioner* v. *Ashland Oil & R. Co.*, 99 F. 2d 588 (C. A. 6th), certiorari denied, 306 U. S. 661. The Tax Court aptly observed (R. 10), as did the court below (Pet. App. 11-12), that the liquidating trustees acted merely as a "conduit" of title from the old corporation to the new. Taxpayer is here advancing essentially the same argument that was rejected in the *Limestone* and *Survaunt* cases, *supra*, where the transaction was held to constitute a reorganization despite an intervening transfer. In this case, as in those cases, the fact that title to the corporate assets was temporarily placed in an intermediary transferee, who then retransferred title to the new corporation, does not render the completed trans-

action any the less a corporate reorganization. The "transferor" of the assets, within the meaning of Code Section 113(a)(7) and Section 112(i)(1)(B) of the 1928 Act, was the predecessor corporation and not its liquidating trustees.

4. The decision below is not in conflict with any other decision. Taxpayer relies (Pet. 8-10) for conflict chiefly upon decisions to the effect that a single transaction may not be viewed for tax purposes according to its component steps. However, both courts below accorded full recognition to that principle by viewing the transfer of the old corporation's assets to the liquidating trustees and the retransfer of those same assets to the new corporation as steps in a single reorganization plan, rather than as separate transactions. None of the cases support taxpayer's position that *transfers of different properties by different transferors* must be viewed as if they were transfers of the same property by the same transferor for purposes of applying the basis provisions of Section 113(a)(7); indeed, none of them presented such an issue. As the court below pointed out (Pet. App. 14), what occurred here was a combination of a tax-free reorganization exchange of the old corporation's assets for the new corporation's stock, plus a separate non-reorganization exchange of individually owned assets for stock in the same corporation. Nothing of the sort occurred in the cases relied upon by taxpayer.

Nor is there any conflict with *United States* v. *Arcade Co.*, 203 F. 2d 230 (C. A. 6th), certiorari

denied, 346 U. S. 828, upon which taxpayer seems to place special reliance. (Pet. 11.) The appellate court there affirmed the trial court's determination that no reorganization was effected because (p. 233) there was no reorganization plan, the former stockholders having become the "absolute owners" of the assets without any obligation to transfer them to a new corporation. No comparable situation is here presented. On the contrary, as is plain from the resolutions adopted at their special meeting on March 12, 1930 (Ex. 19-S, R. 31-33),[9] the stockholders of the old corporation planned from the start to form a new one (pursuant to Section 22 of the New York Stock Corporation Law) and to transfer to it through their directors (acting as liquidating trustees under Section 29 of that Law) the assets of the old corporation.[10]

As for *United Carbon Co.* v. *Commissioner,* 90 F. 2d 43 (C. A. 4th), upon which taxpayer also places special emphasis (Pet. 13-14), the issue of whether the transaction constituted a reorganization was not even raised. Significantly, the *United Carbon* case was distinguished by the very court which decided it in *Britt* v. *Commissioner, supra,* where the same transaction was involved and the question whether a reorganization occurred was presented for the first time. In the *Britt* case it

[9] See also Exhibits 8-W, 11-K, 20-T, 24-X.

[10] In a footnote to its opinion (Pet. App. 12), the court below observed that "if" the *Arcade* decision could be said to be contrary to its own decision, it refused to follow that decision. Since the *Arcade* case is plainly distinguishable, no conflict exists.

was held that a reorganization did occur, and the decision below is in complete harmony with that decision.

II

Stock Issued for Services

The court below correctly sustained the Tax Court's determination that no amount was includible in taxpayer's equity invested capital on account of the stock issued for Ladd's services. Equity invested capital as defined in Code Section 718(a)(2) is expressly limited to "property * * * paid in " for stock. It is settled that only money or property actually embarked in the enterprise is includible in equity invested capital. *LaBelle Iron Works* v. *United States,* 256 U. S. 377, 387; *Simmons Co.* v. *Commissioner,* 33 F. 2d 75 (C. A. 1st), certiorari denied, 280 U. S. 588; *Warner Co.* v. *Commissioner,* 11 T. C. 419, 432-434, affirmed *per curiam,* 181 F. 2d 599 (C. A. 3d); *Cleveland Graphite Bronze Co.* v. *Commissioner,* 10 T. C. 974, 986-987, affirmed *per curiam,* 177 F. 2d 200 (C. A. 6th); *Palomar Laundry* v. *Commissioner,* 7 T. C. 1300. Taxpayer does not claim that there is any conflict with this aspect of the decision below.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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MARCH, 1955.

APPENDIX

Internal Revenue Code of 1939:

SEC. 113. ADJUSTED BASIS FOR DETERMINING GAIN OR LOSS.

(a) *Basis (Unadjusted) of Property.*—The basis of property shall be the cost of such property; except that—

* * * * *

(6) *Tax-free Exchanges Generally.*—If the property was acquired, after February 28, 1913, upon an exchange described in section 112(b) to (e), inclusive, the basis (except as provided in paragraphs (15), (17), or (18) of this subsection) shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made.* * *

(7) *Transfers to Corporation.*—If the property was acquired—

(A) after December 31, 1917, and in a taxable year beginning before January 1, 1936, by a corporation in connection with a reorganization, and immediately after the transfer an interest or control in such property of 50 per centum or more re-

mained in the same persons or any of them, or

(B) in a taxable year beginning after December 31, 1935, by a corporation in connection with a reorganization,

then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. This paragraph shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer.

(8) *Property Acquired by Issuance of Stock or as Paid-in Surplus.*—If the property was acquired after December 31, 1920, by a corporation.

(A) by the issuance of its stock or securities in connection with a transaction described in section 112 (b) (5) (including, also, cases where part of the consideration for the transfer of such property to the corporation was property or money, in addition to such stock or securities), or

(B) as paid-in surplus or as a contribution to capital,

then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

* * * * *

(26 U.S.C. 1952 ed., Sec. 113.)

SEC. 718 [as added by Section 201 of the Second Revenue Act of 1940, c. 757, 54 Stat. 974]. EQUITY INVESTED CAPITAL.

(a) *Definition.*—The equity invested capital for any day of any taxable year shall be determined as of the beginning of such day and shall be the sum of the following amounts, reduced as provided in subsection (b)—

* * * * *

(2) *Property Paid In.*—Property (other than money) previously paid in (regardless of the time paid in) for stock, or as paid-in surplus, or as a contribution to capital. Such property shall be included in an amount equal to its basis (unadjusted) for determining loss upon sale or exchange.
* * *

* * * * *

(26 U.S.C. 1952 ed., Sec. 718.)

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 112. RECOGNITION OF GAIN OR LOSS.

(a) *General rule.*—Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 111, shall be recognized, except as hereinafter provided in this section.

(b) *Exchanges solely in kind.*—

* * * * *

(4) *Same—Gain of Corporation.*—No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(5) *Transfer to Corporation Controlled by Transferor.*—No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

* * * * *

(i) *Definition of reorganization.*—As used in this section and sections 113 and 115—

(1) The term "reorganization" means (A) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation), or (B) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, * * * .

* * * * *

(j) *Definition of control.*—As used in this section the term "control" means the ownership of at least 80 per centum of the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of the corporation.

Treasury Regulations 111, promulgated under the Internal Revenue Code of 1939:

Sec. 29. 113(a)(7)-1 [As amended by T. D. 5402, 1944 Cum. Bull. 229, 237]. *Property Acquired by Corporation in Reorganization After December 31, 1917.*—Section 113(a)(7) sets forth the conditions under which the basis of

property acquired by a corporation after December 31, 1917, in connection with a reorganization as defined in section 112(g), or a corresponding provision of a prior Revenue Act, is the same as it would be in the hands of the transferor, increased or decreased as therein provided in the amount of gain or loss recognized to the transferor under the applicable revenue law. In the case of property so acquired in a taxable year beginning prior to January 1, 1936, such basis is applicable only if immediately after the transfer there remained in the same persons or any of them an interest or control in such property of 50 percent or more. * * *

* * * * *

Sec. 29. 113(a)(8)-1. *Property Acquired by a Corporation After December 31, 1920.*—The acquisition of property by a corporation after December 31, 1917, by the issuance of its stock or securities may not fall within the provisions of section 113(a)(7), because of the fact that the property was not acquired in connection with a reorganization. If, however, the acquisition of such property occurred after December 31, 1920, and falls within the provisions of section 113(a)(8), the limitations therein imposed upon the basis of such property are applicable.

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Treasury Regulations 112, promulgated under the Internal Revenue Code of 1939:

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Sec. 35.718-1. *Determination of Daily Equity Invested Capital—Money and Property Paid in.*—* * * For the purpose of determining equity invested capital, the amount of any property paid in is the unadjusted basis to the taxpayer for determining loss upon a sale or exchange under the law applicable to the taxable year for which the invested capital is being computed. * * *

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The provisions of Sections 19.113(a)(7)-1 and 19.113(a)(8)-1 of Treasury Regulations 103, and Section 30.718-1 of Regulations 109, promulgated under the Internal Revenue Code and applicable to the year 1941, are substantially the same as the foregoing.

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